bitkom

Position Paper

September 2025

Bitkom on the European Commission's consultation on the first review of the Digital Markets Act

I. List of Core Platform Services and designation of gatekeepers

Question 1: Do you have any comments or observations on the current list of core platform services?

Opinions among our members regarding the enforcement of the DMA are highly divided. We will therefore take these differing perspectives into account when responding to the consultation questions.

Some companies urge European lawmakers to uphold the DMA's established standards and to further develop them in order to address future technological advancements and emerging digital infrastructure. In particular, they recommend updating the list of Core Platform Services (CPS) to include Large Language Models (LLMs) as a new category. Although LLMs are not yet covered as a separate CPS, they are – in their view – of considerable practical relevance. The combination of market-dominant platform services with AI capabilities is likely to create tensions and distort competition if left unregulated. For example, in the context of e-commerce, it is conceivable that much of the customer interaction influencing purchasing decisions could increasingly take place directly on a gatekeeper's platform (e.g. via AI-integrated search engines). Online shops might thereby lose valuable traffic, as customers could be redirected to their websites at the very last step – the actual purchase. Gatekeepers, in turn, would potentially gain further valuable insights into consumer purchasing behavior.

Other companies, however, argue that the DMA is already equipped to regulate LLMs and AI services in general and therefore is no need to amend the existing list of CPS. Where AI systems are part of designated CPS, the existing obligations apply to them. In addition, Art. 3(8) of the DMA allows intervention and designation even when a company has not met all three quantitative criteria. Triggering Art.3(8) in this case for players who may have reached the turnover and business/end user thresholds but have not done so for 3 consecutive years seems appropriate to ensure a timely intervention and enable AI markets to remain competitive and contestable. Yet other companies take the position that AI services in general should not be regulated under the DMA. They argue that AI technologies are highly competitive and fast-moving, with increasing availability and intense competition at every level – ranging from the computing infrastructure required to build and train foundational models, to the development of the models themselves, and to the diverse applications in which they are embedded. Europe's AI ecosystem is thriving, driven by a surge of innovative startups, broad adoption of AI solutions across companies of all sizes, and a strong network of specialized AI providers supported by active venture capital. Extending the DMA to this rapidly evolving sector, they argue, would stifle innovation and endanger the EU's vibrant AI industry.

Some companies further propose that the Commission should ensure Cloud Computing Services are adequately covered by the DMA. Others disagree, noting that IT services are already highly competitive and characterized by constant innovation and disruption from both new entrants and established players. They warn that such an approach could undermine the EU's ambitions to expand computing capacity and strengthen competitiveness.

If the DMA regulates online retail marketplaces, it is further suggested that the Commission should ensure a level playing field and include global and national champions, particularly Chinese marketplaces.

Finally, several members recommend that the Commission apply the Virtual Assistants CPS more proactively. Other members disagree, noting that the market for virtual assistants is still relatively small (compared to DMA thresholds) and highly competitive.

Question 2: Do you have any comments or observations on the designation process (e.g. quantitative and qualitative designations, and rebuttals) as outlined in the DMA, including on the applicable thresholds?

There remains considerable uncertainty regarding the interpretation of key threshold criteria. First, it is unclear to what extent different entities within a corporate group must be aggregated. The threshold of 45 million active end users is particularly ambiguous, as the definition of active end users is broad and open to wide interpretation. Applying a uniform threshold across all types of CPS further exacerbates distortions. In the case of online marketplaces, for example, a user is already classified as an active end user if they simply visit the marketplace website—since even minimal

activity such as scrolling is recorded—regardless of whether they actively browse the marketplace (e.g., by selecting products) or complete an actual purchase. In practice, the number of users who visit a marketplace website, even incidentally (e.g., by clicking on an online advertisement by mistake), is many times higher than the number of users who engage meaningfully or make purchases. This results in a misleading picture of the true relevance of online marketplaces. The same applies to other transaction-based business models. In such cases, the focus should always be on individual end users who carry out transactions via mediated services, rather than merely on traffic volumes.

It is also criticized that Chinese companies, despite their significant presence in certain Member States, operate outside the scope of these regulations.

Among the companies advocating for an expansion of the CPS list, it is proposed that qualitative thresholds be introduced for certain new technologies such as LLMs, which already demonstrate market concentration and may meet the requirements of Art. 3(1) of the DMA, despite not meeting quantitative criteria. Other companies, however, caution that the introduction of such qualitative thresholds should be undertaken carefully to avoid creating additional ambiguity and uncertainty regarding the scope.

With regard to qualitative criteria, it is noted that Article 3(8) of the DMA already provides an appropriate basis for the designation of gatekeepers on the basis of qualitative considerations. Some argue, that this provision should be applied more consistently in the future and further developed. In particular, the characteristic of multihoming (i.e. the ability of users and businesses to use multiple platforms) should be included in the catalogue of criteria for gatekeeper designation. It is claimed, that where multihoming exists, neither dependency nor consolidated market power can arise, leading to the conclusion that companies whose customers intensively multihome should not be subject to the DMA's obligations.

II. Obligations

Question 1: Do you have any comments or observations on the current list of obligations (notably Articles 5 to 7, 11, 14 and 15 DMA) that gatekeepers have to respect?

The first years of implementation have shown that DMA-compliance is not straightforward and that the law is not self-enforcing. Workshops highlighted both its complexity and lack of clarity. Despite intensive engagement of designated companies and dialogue with the EC, substantial uncertainty remains as to how obligations should be implemented.

This perception is shared by companies using gatekeeper services. For advertisers, transparency in online advertising – particularly under Articles 5(9), 6(8) and 6(10) – is of critical importance. Advertisers report that they lack clear and meaningful

information from gatekeepers which, in their understanding, is required to be shared under the DMA. They therefore call for clearer guidance on this issue, whether in guidelines or in preparatory papers. They argue that, where necessary, adjustments to the DMA should be pursued through delegated acts as foreseen in the regulation, rather than by reopening the legal text. This would ensure both flexibility and legal certainty while safeguarding the integrity of the EU's digital rulebook. In their view, it should be clarified that under Article 5(9) gatekeepers must not only disclose the price but also provide insight into the mechanics of the auction that led to the price in question. However, requiring gatekeepers to reveal every aspect of auction and ranking mechanisms could allow advertisers to manipulate the system and gain access to highly valuable proprietary information. Consequently, there is no doubt that certain data should not be disclosed. Nevertheless, advertisers insist on greater clarity regarding the scope of the gatekeepers' disclosure obligations. Given the wide variety of data and information potentially covered, it may be more appropriate to specify which types of information gatekeepers may withhold. Addressing this shortcoming would benefit both advertisers and gatekeepers and could help prevent lengthy disputes. Should it ultimately be the case that gatekeepers are not legally obliged to disclose the above-mentioned information, advertisers emphasize that the current disclosure obligations are insufficient to meaningfully address the imbalance of power between gatekeepers and advertisers. In this case, they argue, a revision of the relevant provisions should be considered.

It is further noted that the DMA's one-size-fits-all approach fails to account for the diverse nature of different services, resulting in ill-suited obligations for certain sectors. While some obligations appear tailored to specific conduct or service offerings by particular providers, they are not well-adapted across the full spectrum of CPS. A prime example is the data portability obligation, designed for messaging/communications or social media, which is poorly suited for the retail sector. Customers in the retail sector, it is claimed, rarely wish to transfer personal data such as order history between marketplaces, in contrast to other sectors where portability is more relevant. Despite this, all gatekeepers are required to implement such obligations, necessitating significant engineering solutions and costly investments. This blanket approach disregards whether such solutions provide meaningful customer benefits or foster competition. It runs counter not only to the EC's 'Better Regulation' principles, but also to its stated commitment to regulatory simplification as a driver of the EU's competitiveness.

It is perceived that the DMA's restrictions on data combination/use have had unintended consequences for SMEs relying on targeted advertising to reach potential customers. Designated companies express concern that this could limit their ability to present the most relevant ads and may therefore reduce the effectiveness of advertising within their services, potentially leading to diminished visibility for European business users.

Concerns have been raised about the implementation of data portability obligations in relation to security and privacy risks. Many applications lack basic business verification details, and numerous applicants fail to respond when asked to complete standard privacy and security assessments. This pattern suggests that many requests for data access may come from actors unable to demonstrate adequate safeguards for handling

sensitive customer information. The DMA thus creates a difficult balance: while companies are required to enable data portability, they must also protect personal data and uphold security standards under the GDPR. This regulatory tension places customer data at risk.

Designated companies stress that templates under Art. 11 should be simplified to focus on new measures/information directly relevant to demonstrating compliance. The current system requires an excessive volume of information, often exceeding what is necessary. Streamlining the templates would reduce administrative burdens and support more effective compliance, while maintaining appropriate regulatory oversight.

Question 2: Do you have any other comments in relation to the DMA obligations?

Many companies call on the Commission to conduct periodic impact assessments and third-party audits under Article 7, as well as to provide SME-friendly compliance tools, such as APIs, data export functions, and choice screens.

It is further suggested that there should be a formal procedure to lift obligations when they clearly serve no purpose in a sector. In some industries, certain DMA obligations may be irrelevant or even counterproductive. A formal process to review and potentially lift such obligations would allow for more efficient and targeted regulation, ensuring that the DMA remains relevant and effective across different sectors without imposing undue burdens where they are not needed. Establishing a framework that considers not only the introduction of regulation but also its potential removal would also align with the EU's stated objectives on regulatory simplification. European lawmakers are additionally urged to examine overlapping obligations across different legislative instruments, for example, data portability under the DMA and interoperability under the Data Act. Such overlaps risk creating conflicts and redundancies, thereby increasing compliance complexity for businesses.

III. Enforcement

Question 1: Do you have any comments or observations on the tools available to the Commission for enforcing the DMA (for example, whether they are suitable and effective)?

As part of its review of the DMA, the Commission should not only assess the tools at its disposal but also evaluate how effectively it is using them.

The efficiency and effectiveness of Requests for Information (RFIs) could be improved through a more collaborative approach. At present, RFIs can be broad and sometimes lack clear focus. A more structured process, starting with preliminary discussions about

the scope, purpose, and format of the requested information, would help ensure that requests are more targeted and that responses are more useful. Such an approach would enable companies to better understand what is being sought and to provide relevant information more efficiently, aligned with their internal data structures.

There should also be a clear distinction between informal inquiries and formal non-compliance investigations. It remains unclear when the Commission will initiate specification proceedings and when it will trigger a non-compliance investigation directly. In cases of non-compliance investigations, the Commission should be required to justify thoroughly its decision to do so. More comprehensive RFIs should be reserved for formal non-compliance investigations with clear timelines. At present, the Commission appears to rely on informal inquiries as an extended investigative tool without formally opening a case, as these inquiries are not bound by deadlines. Unlike formal investigations, which should ideally be concluded within 12 months, informal inquiries can continue indefinitely. This lack of structure creates long periods of uncertainty for companies, as compliance expectations may shift over time, making it difficult to design solutions that work for developers and other stakeholders.

The effectiveness of regulatory dialogues could be enhanced if the Commission shared concerns identified during informal inquiries more openly, allowing designated companies to address issues proactively. Greater transparency regarding the Commission's coordination with other regulatory bodies, such as the European Data Protection Board, would also be beneficial.

Legal certainty could be further strengthened by ensuring more consistent enforcement processes across different DGs and case teams. Currently, procedural differences exist between DG COMP and DG CONNECT in their approaches to DMA enforcement. Aligning these processes more closely would provide clearer guidance for companies navigating compliance.

Document requests should also be made more targeted to avoid overly broad scopes. For instance, requiring documents from all employees subject to retention orders may inadvertently incentivize companies to reduce the number of employees included in such orders. A more focused approach could lead to more efficient and effective information gathering.

Notwithstanding the above, many companies stress that the Commission is underutilizing the tools already available to it. They call for stronger use of interim measures to prevent irreversible harm, the establishment of a public enforcement dashboard to increase transparency, and greater allocation of resources to enforcement.

Question 2: Do you have any comments in relation to the enforcement to the DMA?

It is criticized that the Commission has not sufficiently considered the impacts and trade-offs when making enforcement decisions under the DMA. This has led to outcomes that are not technically sound and that benefit only a small number of developers. One possible reason is the DMA's broad scope, which requires the regulator

to build deep subject-matter expertise across a wide range of market and technical issues. Another contributing factor may be the previously criticized one-size-fits-all approach, which often overlooks platform-specific security requirements and leaves users more exposed to cyber threats. This risks undermining the EU's broader economic security agenda, including initiatives such as the Cybersecurity Strategy, the Cyber Resilience Act, and the NIS2 Directive, which all aim to strengthen digital defences. It is therefore proposed that the DMA High-Level Group (HLG) be systematically involved, and that ENISA, with its cybersecurity expertise, be invited to address the current gap in assessing the cybersecurity implications of DMA implementation.

Many companies also expect national competition authorities to support enforcement of the DMA through evidence gathering and stakeholder consultation.

However, with respect to the engagement of national competition authorities, it is emphasized that they must not issue decisions that conflict with those of the Commission. To prevent regulatory fragmentation and ensure a coherent European framework, the Commission should issue clear guidance on the scope of Article 1(6)(b). In this context, further obligations should be interpreted narrowly to cover only those obligations that address conduct not already regulated by the DMA.

IV. Implementing Regulation and procedure

Question 1: Do you have any comments or observations on the DMA's procedural framework (for instance, protection of confidential information, procedure for access to file)?

Transparency of enforcement outcomes, as well as towards third parties cooperating with the Commission, must be further strengthened.

The Commission should announce any public consultation conducted in the context of specification proceedings and market investigations, in order to improve the transparency of these processes. Third parties provide valuable market insights in DMA proceedings. However, it is often unclear when and how the Commission consults them.

Unlike in merger control, there is no public hearing on proposed remedies. As a result, it is often unclear what specific remedies will entail or what the Commission considers appropriate. In practice, discussions with gatekeepers and stakeholders often take the form of repeated exchanges without clarity on which behaviors the Commission deems compliant. This lack of transparency makes it difficult for designated companies to assess whether their significant investments in compliance measures are achieving the intended regulatory outcomes. The position of interested parties is further complicated by the fact that the Commission's official objections in infringement proceedings are not published, leaving stakeholders unable to understand the Commission's legal

assessment, the specific conduct under objection, or what potential remedies might look like.

Furthermore, the Commission should have the ability to 'stop the clock' when designated companies are engaging in good faith. Such a mechanism would ensure that artificial deadlines do not undermine designated companies' ability to develop technical solutions that are appropriately designed, taking into account the nature of the obligations, the designated companies' business model, and the needs of both small and large developers.

Question 2: Do you have any comments in relation to the Implementing Regulation and other DMA procedures?

Some companies suggest that the Commission should consider organizing regular workshops on fast-moving topics such as LLM, APIs, open-source AI, and immersive platforms as well as granting non-confidential access to researchers, experts, and civil society. Others strongly disagree and reject such disclosures in order to protect their critical business secrets.

In line with Regulation 1/2003, designated companies should have the right to request an oral hearing and to appeal to an independent hearing officer to resolve issues related to confidentiality, legal privilege, and access to file. The absence of a hearing officer under the DMA, to whom designated companies could address procedural disagreements with the Commission, could undermine procedural fairness.

V. Effectiveness and impact on business users and end users of the DMA

Question 1: Do you have any comments or observations on how the gatekeepers are demonstrating their effective compliance with the DMA, notably via the explanations provided in their compliance reports (for example, quality, detail, length), their dedicated websites, their other communication channels and during DMA compliance workshops?

Some companies note that the quality and standard of gatekeepers' compliance reports vary considerably. Reports lack standardization and, as a result, often appear to lack substantive content. The Commission should set minimum reporting standards to

address this issue. The DMA compliance workshops are seen as an interesting format, but so far they have produced little discernible output or added value.

Given the significant compliance costs associated with implementing the DMA (both actual compliance and the costs of demonstrating it through reports, workshops, and dedicated websites) designated companies argue that after the initial years of demonstrated compliance, the number and frequency of such reports and workshops should be reduced.

Question 2: Do you have any concrete examples on how the DMA has positively and/or negatively affected you/your organisation?

As an association with both business users and designated companies as members, we are unable to provide specific examples.

Question 3: Do you have any comments in relation to the impact and effectiveness of the DMA?

In summary, the overall expectations of the DMA have not been met so far.

Some companies consider that the DMA has been effective in raising awareness and establishing a regulatory framework. However, according to business users, no significant changes in the practices that were the subject of complaints have been observed to date. They believe that, without timely enforcement and AI-specific obligations, the DMA's transformative potential for SMEs and European digital markets remains limited. Based on this perspective, some companies call for the creation of an EU-level SME support fund to offset compliance costs, including for APIs, reporting, and interoperability. They also suggest that interoperability sandboxes be facilitated by the Commission to enable co-development, and that awareness campaigns inform SMEs and consumers about their rights under the DMA.

Designated companies are of the view that the DMA's impact assessment did not sufficiently consider its implications for cost and platform integrity and security. According to this perspective, this oversight has led to indirect costs for designated companies, who must manage new integrity risks, as well as for consumers and business users, who may face increased exposure to risk. In particular, the designated companies consider that end users' choice has been affected by delays or even halts in the launch of new and innovative products in the EU, largely due to the complexity of developing DMA-compliant solutions.

Designated companies that have made substantial technical and operational investments in DMA compliance consider that these efforts should be taken into account in parallel or subsequent competition investigations. In particular, when similar conduct is assessed in merger reviews, they believe that their compliance measures should inform the assessment. From their perspective, recognizing these

efforts would acknowledge the resources already invested, ensure consistency in regulatory approaches, and help avoid duplicative or conflicting requirements.

VI. Additional comments and attachments

Question 1: Do you have any further comments or observations concrete examples on how the DMA has positively and/or negatively affected you/your organisation?

Bitkom represents more than 2,200 companies from the digital economy. They generate an annual turnover of 200 billion euros in Germany and employ more than 2 million people. Among the members are 1,000 small and medium-sized businesses, over 500 start-ups and almost all global players. These companies provide services in software, IT, telecommunications or the internet, produce hardware and consumer electronics, work in digital media, create content, operate platforms or are in other ways affiliated with the digital economy. 82 percent of the members' headquarters are in Germany, 8 percent in the rest of the EU and 7 percent in the US. 3 percent are from other regions of the world. Bitkom promotes and drives the digital transformation of the German economy and advocates for citizens to participate in and benefit from digitalisation. At the heart of Bitkom's concerns are ensuring a strong European digital policy and a fully integrated digital single market, as well as making Germany a key driver of digital change in Europe and the world.

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